IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

-

WRIT PETITION NO : 19246 of 2004

Between:

Ch.Ravinder Rao, S/o Ramakrishnaiah,
R/o HIG-II, Phase-I, Vanasthalipuram, Ranga Reddy District

..... PETITIONER

AND

1 The State of Andhra Pradesh rep.by its Secretary to Government Legislative Affairs and Justice Law,
(LA and J Courts-A), Secretariat, Hyderabad
2 The Director of Prosecution, Office at D.G.P.Office Campus
A.C.Gaurds, Hyderabad
3 The District Collector, Ranga Reddy District
4 The Prl.District Judge, Ranga Reddy District
5 G.Sadanandam,
R/o H.No.16-11-410/1/A, Moosaram Bagh, Dilsukh Nagar, Hyderabad
6 K.Raji Reddy,
R/o Flat No.102, Pooja Vihar Apartment, Reddy Colony, Champapet, Hyderabad
7 E.Suresh,
R/o H.No.9-54, Lalitha Nagar, Dilsukh Nagar, Hyderabad
8 B.Chaitanya Swamy,
R/o H.No.11-2-33, Road No.9, 14/B, Venkateswara Colony,
Saroor Nagar, Ranga Reddy District

9 S.Srinivas Reddy,
R/o Plot No.52, Visali Nagar, Champapet, Hyderabad
10 J.Shyamala,
R/o H.No.3-11-76, R.T.C.Colony, L.B.Nagar, Ranga Reddy District
11 Pocharam Ram Reddy,
R/o 5-1-56, Gowliguda, Near Golden Press, Hyderabad
12 Ramesh Gupta S
R/o H.No.17-1-391/5/214, Singareni Colony, Saidabad, Hyderabad
13 T.Naga Raju,
R/o 17-2-528/1, Kurmaguda, Saidabad, Hyderabad
14 Premanandam,
R/o H.No.7-74, Madhurapuri Colony, Dilsukh Nagar, Hyderabad..

15. Prahlad Porika, 55 years, Occu: Advocate, H.No.3-13-80, Madhuranagar, Ramanthapur, R.R.District.

(R-15 is impleaded as per Court Order in W.P.M.P.NO.1397/05 dt.9.3.05)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of "Writ of Mandamus" declaring the action of the respondents No.1 to 4 in not taking steps to fill up Eight posts of Addl.Public Prosecutor Posts, in the courts of Additional District Judges Court and Sub-Courts at Ranga Reddy District as illegal, arbitrary and violative of Part-III of the Constitution of India, consequently declare the action of the respondents No.1 to 4 in calling for Second Panel for the post of Addl.Public Prosecutor in 1st Additional District Judge court, Ranga Reddy District, ignoring the first panel sent in the month of August 2003 as illegal, arbitrary, violative of Section 24 of Cr.P.C. and Andhra Pradesh Law Officers/ Appointment and conditions of service) Instructions-2000, brought in through vide G.O.MsNo.187, dated 6-12-2000 and also violative of Part-III of Constitution of India and pass such other order as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.UNNAM.MURALIDHAR RAO

Counsel for the Respondent No: MR.C.V.NAGARJUNA REDDY

The Court made the following :

ORDER:

The petitioner seeks to issue writ of mandamus declaring the action of respondents 1 to 4 in not taking steps to fill up eight posts of Additional Public Prosecutors in the Courts of Additional District Judges and also Subordinate Courts at Ranga Reddy District as illegal and arbitrary and violative of Part-III of the Constitution of India and consequently declare the action of respondents 1 to 4 in calling for second panel for the post of Additional Public Prosecutor in I Additional District Judge Court, Ranga Reddy District, ignoring the first panel sent in the month of August/September, 2003 as illegal, arbitrary and violative of Section 24 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and Andhra Pradesh

Law Officers (Appointment and Conditions of Service) Instructions, 2000 (hereinafter referred to as 'Instructions') issued in G.O.Ms.No.187 dt.6.12.2000 and also violative of Part III of the Constitution of India.

The undisputed facts are that the Government in order to fill up the post of Additional Public Prosecutor in the court of I Additional District and Sessions Judge, Ranga Reddy District, called for a panel of advocates keeping in view of the instructions issued by it from time to time. The District Collector, Ranga Reddy District, 3rd respondent herein, in consultation with the Principal District and Sessions Judge, Ranga Reddy District, has sent the panel of seven advocates vide his Lr.No.C1/4161/2003 dated 18.9.2003 for appointment to the post of Additional Public Prosecutor for the Court of I Additional District and Sessions Judge, Ranga Reddy, in order of preference duly verifying about their character and antecedents through the police. The panel consists of the following names:

1. Sri K.Sadanandam – B.C-B

2. Sri Srinivas Reddy – O.C.

3. Sri K.Raj Reddy – O.C.

4. Sri Ch.Ravinder Rao – O.C.

5. Sri B.Chatnaya Swamy – B.C-B

6. Sri Egala Suresh – SC

7. Smt.J.Shyamala – Women

It appears that the Government examined the panel of seven advocates sent by the District Collector on 18.9.2003 and observed in its memo dated 20.12.1999 that the panel should consist of five names only and, accordingly, the District Collector was requested to furnish a fresh panel of five advocates for appointment of Additional

Public Prosecutor for the court of I Additional District and Sessions Judge, Ranga Reddy District, vide its memo dated 24.6.2004. Accordingly, the District Collector vide letter dated 3.7.2004 requested the Principal District and Sessions Judge, Ranga Reddy District, to sponsor a fresh panel of five advocates. The Principal District and Sessions Judge, Ranga Reddy District, accordingly, vide letter dated 5.8.2004 has furnished to the District Collector the names of following five advocates in preferential order for consideration to the post of Additional Public Prosecutor for the Court of I Additional District and Sessions Judge, Ranga Reddy District.

1. Sri P.Reddy – O.C

2. Sri S.Srinivas Reddy – O.C

3. Sri S.Ramesh Gupta – O.C.

4. Smt.J.Shyamala – Women (B.C-D)

5. Sri T.Naga Raju – B.C-D.

Even the second panel was also not considered on the ground that the name of one S.C. candidate, Sri Egala Suresh, who was empanelled in the first panel, was ignored and also as per G.O.Ms.No.187 dated 6.12.2000 the rule of reservation and roster is to be made applicable in appointment of Law Officers by taking into consideration of zone as a unit of appointment. The base shall be on the ground of merit and suitability and reasonable representation to the members of S.C/S.T/B.C categories with the ratio of 15%, 6% and 25% respectively. Accordingly, a revised list of panel adhering to the Government instructions on the aspect of rule of reservation are sought from the Principal District and Sessions Judge. Therefore, the Principal District and Sessions Judge vide letter dated 11.10.2004 has sent the following seven names of advocates in preferential order for consideration for appointment of Additional Public Prosecutor for the Court of I Additional District and Sessions Judge, Ranga Reddy District even without including the name of the said Egala Suresh.

1. Sri P.Ram Reddy – O.C.

2. Sri Srinivas Reddy – O.C

3. Sri S.Ramesh Gupt – O.C

4. Smt.J.Shayamala – Women

5. Sri T.Naga Raju – B.C-D

6. Sri T.Premanandam – S.C

7. Sri Prahalad Porika – S.T

It is also stated that the filling up of the post of the Additional Public Prosecutor in the Court of I Additional District and Sessions Judge, Ranga Reddy District is under process.

The learned counsel appearing for the petitioner submits that five posts of Additional Public Prosecutors are unfilled in the Court of Additional District and Sessions Judges and three posts of Additional Public Prosecutors are unfilled in the Court of the Additional Assistant Sessions Judges. During the pendency of the writ petition, the term of the Public Prosecutor working in Principal District and Sessions Judge was also expired in January, 2005 and the post of the Additional Public Prosecutor in the Court of I Additional District and Sessions Judge was also vacant.

It is admitted in the counter affidavit that the post of the Public Prosecutor in the Court of Principal District and Sessions Judge, Rangareddy District was expired by January, 2005. The post of Additional Public Prosecutor in the Court of I Additional District and Sessions Judge is vacant and the panel received from the District Collector is under process. The post of Additional Public Prosecutor in the Court of II Additional District and Sessions Judge has been filled by appointing one Laxmi Narasaiah, a cadre prosecuting officer. It is also submitted that the tenure posts attached to the III and IV Additional District and Sessions Judges (Fast Track Courts) could not

be filled up in view of stay orders passed by this Court in W.P.M.P.No.25002 of 2002 in W.P.No.19882 of 2002 filed by E.Suresh, Advocate. The said W.P.No.19882 of 2002 is dismissed as withdrawn on 9.3.2005 and the stay granted in W.P.M.P.No.25002 of 2002 automatically stands vacated. The post of Additional Public Prosecutor attached to the Court of Principal Assistant Sessions Judge, Rangareddy District, is also vacant due to suspension of the existing prosecuting officer and steps are in progress to fill up the same. The post attached to the Court of I Additional Assistant Sessions Judge is filled up by appointing one Lakshmi Rajyam, a cadre prosecuting officer. The post attached to the Court of II Additional Assistant Sessions Judge is filled by appointing Mr.Ramesh Gupta, a practicing advocate on 11.6.2001 and his tenure had come to an end and the panel is awaited from the Collector. The post of Additional Public Prosecutor attached to the Courts of III and IV Additional Assistant Sessions Judge (Fast Track Courts) are vacant and panels are yet to be received from the District Collector, Ranga Reddy District. The post of Additional Public Prosecutor in the Court of Assistant Sessions Judge, Vikarabad, was already filled up by posting Mr.S.K.M.Quadri, a cadre prosecuting officer on 21.3.2003. Thus, admittedly, the post of Public Prosecutor for the Court of Principal District and Sessions Judge, Ranga Reddy District which has fallen vacant from January, 2005 is to be filled apart from the posts of Additional Public Prosecutors for the Courts of I Additional District and Sessions Judge, III Additional District and Sessions Judge, IV Additional District and Sessions Judge and V Additional District and Sessions Judge. There are five posts of Additional Public Prosecutors to be filled up. The posts of Additional Public Prosecutor for the Courts of the Principal Assistant Sessions Judge, II Additional Assistant Sessions Judge, III Additional Assistant Sessions Judge, IV Additional Assistant Sessions Judge are to be filled up. There are four posts of Additional Public Prosecutors to the courts of Additional Assistant Sessions Judge. Thus there is total nine number of posts of Public/Additional Public Prosecutors to be filled up as on date.

The question that arises for consideration is whether the action of the respondents in not considering the panel of names sent by the District Collector in his letter dated 18.9.2003 for appointing to the post of Additional Public Prosecutor for the Court of I Additional District and Sessions Judge, Ranga Reddy, is justified?

Admittedly, the District Collector, Ranga Reddy District, in consultation with the Principal District and Sessions Judge has sent the first panel of seven names in September, 2003. Under Section 24 of the Code of Criminal Procedure, 1973 the Government shall appoint Public Prosecutor/Additional Public Prosecutor for every District. Therefore, it is the duty of the Government to appoint Public Prosecutor and Additional Public Prosecutor to the concerned court of every District. Under Section 24(4) of the Code the District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district. Under Section 24(5) of the Code the State shall not appoint any person as Public Prosecutor or Additional Public Prosecutor unless his name appears in the panel of names prepared by the District Magistrate. Under Section 24(7) of the Code a person shall be eligible to be appointed as Public Prosecutor or Additional Public Prosecutor if he has been in practice as an advocate for not less than seven years. The Government in G.O.Ms.No.187, Law (L) Department, dated 6.12.2000 issued Instructions regulating the appointment and conditions of service of the Law Officers. The said Instructions are in force as on today. Though the said Instructions have been challenged in W.P.No.19982 of 2002, the same is dismissed as withdrawn on 9.3.2005. Instruction No.5 deals with appointment of Law Officers in all Courts and Tribunals subordinate to High Court. Sub-instruction (1) says that the appointment of Law Officers in all the Courts and Tribunals subordinate to the High Court shall be made on the basis of the recommendations of District Collector concerned who shall ascertain the views of the concerned

District and Sessions Judge before making recommendations. As per sub-instruction (2) the District Collector shall prepare a panel of Advocates well in advance before expiry of the term of incumbents and send the same to the Government for consideration. The Collector while making recommendation to the Government shall also furnish the particulars in respect of advocates included in the panel, which shall pertain to a period of three years immediately preceding the year in which the recommendation is made and which shall be in a full and complete form and adequate for the purpose of the selection i.e., qualification, age, social status, standing at the Bar as an advocate, nature of practice, the number of sessions cases conducted (in case of posts of Public Prosecutor and Additional Public Prosecutor) etc. As per sub-instruction (4) on receipt of a panel sent by the District Collector under sub-instruction (1) the Government shall consider the same and appoint one among the panel as Law Officer for a term prescribed under Instruction 8 or call for a fresh panel. As per Instruction No.8, Law Officers shall ordinarily be appointed for a term of three years. The Law Officers so appointed may be considered for a second term, if the Government are satisfied that he has proven efficiency, high rate of success and good performance and for a third term in exceptional cases. Therefore, a reading of Section 24 of the Code read with Instruction No.5 makes it clear that it is the duty of the Government to appoint the Public Prosecutor and Additional Public Prosecutors timely to all the courts in the District on the basis of the recommendation of the District Collector concerned, after ascertaining views of the concerned District and Sessions Judge before making the recommendation. The preparation of panel of names by the District Collector in consultation with the District Judge is not a mere formality, but the District Collector is bound to consult with the District Judge while preparing the panel. In the instant case, the first panel was prepared by the District Collector in consultation with the Principal District and Sessions Judge. Neither in Section 24 of the Code nor in any of the Instruction of Law Officers the stipulation of particular number of advocates alone has to be sent for each post has been mentioned. Therefore,

any memo issued cannot override the Instructions issued by the Government. It is stated by the Government that a memo has been issued on 24.6.2004 requesting the District Collector to furnish a panel of five advocates only for each post. But the panel sent by the District Collector consisting of seven names and, therefore, fresh panel was called for. The said reason given by the Government is not in conformity either with Section 24 of the Code or in accordance with Law Officers Instructions.

During the course of arguments, the learned Government Pleader for Law and Legislative Affairs has produced a copy of the memo dated 24.2.2005 issued by the Law Department which shows that the panel received from the District Collector, Ranga Reddy District in connection with the appointment of Additional Public Prosecutor for the Court of I Additional District and Sessions Judge, Ranga Reddy District has been rejected due to the subsequent event of redesignation of the said court as Metropolitan Sessions Judge's Court, Cyberabad. The said memo goes to show that the District Collector, Ranga Reddy District was already requested in memo dated 18.2.2005 to send a fresh panel in consultation with the Metropolitan Sessions Judge, Cyberabad as required under Section 24 Cr.P.C., for consideration and for appointment of Public Prosecutor to the Court of Metropolitan Sessions Judge, Cyberabad. The said panel is awaited from the Collector and District Magistrate, Ranga Reddy District. In view of the said memo, the learned Government Pleader appearing on behalf of respondents submits that in view of rejection of the panel by the Government, the question of appointment of Additional Public Prosecutors does not arise. Admittedly, the Court of I Additional District and Sessions Judge, Ranga Reddy District alone has been redesignated as Metropolitan Sessions Judge's Court, Cyberabad. Except the change of name of the Court, there is no change in the designation of the Presiding Officer, staff, place and jurisdiction of cases. Therefore, it cannot be said that merely because the name of the Court has been redesignated, the panel sent for the particular court is liable to be

rejected. Therefore, I am of the view that the action of the Government in issuing the memo of dated 24.2.2005 requesting the District Collector, Ranga Reddy District, to send fresh panel without considering the first panel is illegal and unsustainable.

In this regard, while considering the ambit and scope of Section 24 Cr.P.C., and the similar Instructions issued in respect of the appointment of Law Officers, this Court in *P.Vijayalakshmi v. Government of Andhra Pradesh* held that in view of the nature of office held and the functions performed by the Sessions Judge, the ascertainment of views shall be meaningful, purposeful and result oriented. Therefore, the only question that arises for consideration is whether the non-consideration of the first panel is justified and valid in the light of Section 24 Cr.P.C., read with Law Officers Instructions. It is not the case of respondents that the names of advocates sent in the first panel by the District Collector on 18.9.2003 is not in accordance with the Law Officers Instructions.

The learned counsel appearing for the petitioner submits that the District Collector after ascertaining the views of the District Judge shall send a panel to the Government for consideration. Accordingly, the District Judge addressed a letter to the President of the Bar Association on 30.6.2003 and the said notice was displayed on the notice board of the Bar Association and after the Bar Association received all the bio-data's, their names were scrutinized to meet the norms prescribed and their names were sent in the first panel. Most of them are life members of Ranga Reddy District Bar Association. Therefore, the averment in the counter that there is no record to show the practical work experience is without any basis whatsoever. If there is no record, the Government should have called for additional information for all the candidates figured in the first panel. The only reason shown for non-consideration of the names of first panel is that the Government sought for additional information vide memo dated 6.9.2003 about the advocates' work experience as Law Officers. As a matter of fact, persons who have worked as Law Officers obviously for more than two terms were disqualified and they are not entitled for

consideration. Therefore, the work experience as the Law Officer is not at all required. The Government without any justification on the ground that there is no record of work experience as Law Officers in respect of persons whose names are figured in the first panel is not considered and the said action of the Government is arbitrary, illegal and without any justification. Without considering the names of first panel, calling for second and third panels and cancellation of all the panels are also illegal and contrary to Section 24 Cr.P.C., and Law Officers Instructions.

The State is the custodian of criminals and it is the duty of the State to provide free legal aid to the victims and maintain law and order. The State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Therefore, it is the duty of the State to appoint Public Prosecutors to the concerned Courts to render speedy justice. Hence, I am of the view that respondents have failed to perform their statutory and constitutional obligation in filling up posts of Law Officers on some or other flimsy grounds. The State shall initiate action to fill up the posts of Law Officers well in advance before the expiry of tenure. Therefore, I am of the view that non-consideration of the first panel by the Government is illegal and unsustainable and also in violation of Section 24 of the Code as well as the Law Officers Instructions.

The writ petition is, accordingly, allowed. The Government is directed to fill up the posts Additional Public Prosecutors for the Court of I Additional District & Sessions Judge, Ranga Reddy District which was redesignated as Metropolitan Sessions Judge's Court, Cyberabad, and to the Courts of III, IV and V Additional District Judges (Fast Track Courts) and the Courts of Principal Assistant Sessions Judge, Ranga Reddy District, III and IV Additional Assistant

Sessions Courts (Fast Track Courts) as redesignated, as the case may be, within a period of six weeks from the date of receipt of this order. The first respondent shall consider the panel of advocates sent by the District Collector vide his Lr.No.C1/4161/2003 dt.18.9.2003 for appointment to the post of Additional Public Prosecutor for the Court of I Additional District and Sessions Judge, Ranga Reddy, which has been redesignated as above in accordance with Section 24 Cr.P.C., as well as the Law Officers Instructions within six weeks. No order as to costs.

(V.ESWARAIAH, J.)

9.3.2005

Furnish c.c. in two days

B.O.

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To

1 The Secretary to Government, Legislative Affairs and Justice Law, (LA and J Courts-A), Secretariat, Hyderabad
2 The Director of Prosecution, Office at D.G.P.Office Campus A.C.Gaurds, Hyderabad
3 The District Collector, Ranga Reddy District

4 The Prl.District Judge, Ranga Reddy District

5. 2 copies to the Govt. Pleader for Legislative Affairs, High Court Buildings,

Hyderabad.

6. 2 C.D. copies